UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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17-MJ-769(AMD)

UNITED STATES OF AMERICA,

United States Courthouse
Brooklyn, New York

-against-

April 23, 2018
10:00 a.m.

RASHEEDUL MOWLA,

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR HEARING
BEFORE THE HONORABLE ANN M. DONNELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES

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(In open court.)

COURTROOM DEPUTY: All Rise. Criminal cause for a hearing. Docket number 17-MJ-769, United States versus Rasheedul Mowla.

Counsel state your appearance, Government first.

MR. HEEREN: Craig Heeren on behalf of the United States. With me is my colleague Maggie Lee. Good morning, your Honor.

THE COURT: Hello.

MR. ZISSOU: Steve Zissou for Mr. Mowla. And I'm joined by third-year law student Sidney Speller.

THE COURT: Good morning. And good morning, Mr. Mowla.

We're here for a hearing just on a question of Mr. Mowla's competency; is that right, to stand trial?

MR. HEEREN: Yes, your Honor.

THE COURT: Are you ready to call your first witness?

MR. HEEREN: Yes, your Honor. The Government calls Dr. Samantha DiMisa.

(Witness takes the witness stand.)

SAMANTHA DIMISA, called as a witness, having been first duly sworn/affirmed, was examined and testified as follows:

THE WITNESS: Yes.

COURTROOM DEPUTY: State and spell your name.

THE WITNESS: Dr. Samantha S-A-M-A-N-T-H-A, D-I, capital M-I-S-A.

COURTROOM DEPUTY: Have a seat.

THE COURT: Okay, Doctor, just a couple of things. I'm going to ask that you not speak too quickly, I want to make sure the court reporter can take down everything that you have to say. And just wait until whichever lawyer is asking you questions, wait until the person finishes talking before you start talking so we're not talking over one another. If there is something that isn't clear or you need to have repeated let us know, okay?

THE WITNESS: Thank you.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. HEEREN:

Q Good morning.

A Good morning.

Q Could you please provide us with your title and where you work?

A I'm a forensic psychologist at Metropolitan Correctional Center in New York.

Q And can you please tell us what a forensic psychologist is?

A A forensic psychologist conducts mental health evaluation, such as competency to stand trial, criminal

responsibility, as well as risk assessments.

Q If you can go back a hair from the mic. That's great.

Who do you work for?

A I work for the Metropolitan Correctional Center in New York, as well as for the United States Public Health Service.

Q Can you tell -- is the United States Public Health Service known as USPHS?

A Yes.

Q Tell us what that is.

A The USPHS is an organization that supports the needs of individuals in the country and nationally for manmade or domestic events, such as hurricanes or any terroristic attacks, where we respond as a psychologist to provide mental health treatment. There are various other disciplines within the United States Public Health Service that also offer assistance.

Q So to be clear, at this time are you employed by the Bureau of Prisons or the USPHS?

A I'm employed by the USPHS and my duty station is the Federal Bureau of Prisons.

Q How long have you worked at your current facility, the Metropolitan Correctional Center?

A I began working at the Metropolitan Correctional Center in January 2014.

Q Did you work anywhere else before that?

A I did not work anywhere else, but I did have prior placements for both internship as well as post-doctoral fellowship.

Q Where?

A At the Fellow Medical Center in Butner North Carolina and post-doctoral in forensic psychology at the University of Massachusetts Medical School.

Q I think we covered this a bit, can you describe a little more about any of your relevant education, accreditations and specialized training?

A I completed my PhD in clinical psychology in Hofstra University in 2012. I completed a forensic psychology externship at the Metropolitan Correctional Center in New York.

Q Do you receive continuing training?

A Yes, I do.

Q Now, as we get further into this, if I make any mistakes as to the proper terminology, please let me know and correct me. Do you understand that?

A Yes.

Q Can you describe -- are you able to diagnose in your position as a forensic psychologist, psychological and medical or psychological medical conditions?

A I'm able to diagnose psychological disorders.

Q Does that include psychotic disorders like schizophrenia?

A Yes, it does.
Q Can you briefly describe the difference between a psychologist and psychiatrist?
A A psychologist attends graduate school; whereas, a psychiatrist attends medical school. So the main difference between the two professions is that a psychiatrist prescribes medications; whereas, a psychologist does not. A psychologist provides psycho therapy as well as mental health evaluations. A psychiatrist can also do that, but they prescribe medication as well.
Q Can you tell us what is the job responsibilities of, in particular, of a forensic psychologist.
A A forensic psychologist evaluates and looks at the intersection of psychology and law pertaining to questions related to competency to stand trial, criminal responsibility, risk assessments, and treatment recommendations.
Q So is one of your job responsibilities to perform competency evaluations?
A Yes.
Q Can you estimate how many times you've performed a competency evaluation in your career?
A In my career at the Metropolitan Correctional Center in New York I've completed approximately 85 competency to stand trial evaluations. There have been more in my training, but in a position as a forensic psychologist, it has been 85.

Q So 85 that you did yourself, and a number of others that you participated in as an intern?
A As well as an extern, that's correct, yes.
Q Thank you. Have you found individuals competent to stand trial?
A Yes, I have.
Q Have you found individuals not competent to stand trial?
A Yes.
Q Have you previously testified as to competency?
A Yes, I have.
Q Do you recall approximately how many times before you've testified?
A Approximately 20 times before.
Q Have you previously been qualified as an expert as a forensic psychologist?
A Yes, I have.
Q Approximately how many times?
A Each time that I testified I was qualified as an expert.

MR. HEEREN: Your Honor, at this time the Government would move to qualify the witness as an expert in the field of forensic psychology.

THE COURT: Any objection?

MR. ZISSOU: I object to the general classification. If he's asking if she's qualified to do competency examinations, I have no objection. If he's asking whether or

not she's an expert in diagnosing schizophrenia, there is no --

THE COURT: I don't think that's the purpose of this hearing. So you're objecting to her qualifications as a forensic psychologist?

MR. ZISSOU: If he's asking her to be qualified as an expert in determining competency, I have no objection. But the broader term encompasses a great many things.

THE COURT: I'm going to cut this short. I don't know if it's relevant or not, but she's clearly qualified as a forensic psychologist and all the things that that entertains. I find her competent to testify in that field.

Just one question, just in case it's not clear, have you testified to things in addition to competency evaluations?

THE WITNESS: Yes, I have. I've also testified to the issue of criminal responsibility, as well as the Section 15, which is related to Massachusetts state law for the involuntary commitment of individuals with substance abuse.

MR. ZISSOU: May I have a voir dire?

THE COURT: I think all we're talking about is competency, am I right about that?

MR. HEEREN: Your Honor, I expect defense counsel to ask a number of questions about her diagnosis that he's not schizophrenic so...

THE COURT: You want to voir dire her then?

MR. ZISSOU: Well --

THE COURT: If you want to do it, you can. Or you can cross examine her on the topic. There doesn't seem to be a question that she's an expert in the field of forensic psychology.

MR. ZISSOU: I have my opinions.

THE COURT: So voir dire her.

MR. ZISSOU: I guess my question is, is the Court going to limit us to just questions of competency? If that's --

THE COURT: No.

MR. ZISSOU: All right, so then can I have a few minutes, Judge?

THE COURT: Sure.

VOIR DIRE

BY MR. ZISSOU:

Q Dr. DiMisa, you were asked by the Court, I think the Court, for you to prepare a competency examination of Mr. Mowla in this case; is that right?

A Yes.

Q You did that?

A Yes.

Q You spent about three hours or so with him over a period of time and made several observations among other things, correct?

A Yes, I did.
Q As part of your report, you also drew a conclusion about whether or not he suffers from any mental disease such as schizophrenia; isn't that right?
A Yes.
Q How did you come to make the decision to do that, if I might ask?
THE COURT: The only -- I'm not trying to cut you off. We're just going to her qualifications in this area. It sounds to me a little like cross-examination. It's just we're not quite at that stage of the hearing.
MR. ZISSOU: I get that.
THE COURT: It's not your turn. But you want to answer that question, all right.
A I considered various data points, such as prior mental health records, my observations, as well as staff's observations at the Federal Bureau of Prisons. As well as collateral contact with family and my interviews and tests of the defendant.
Q You consider a number of things. The question was, how did you come to decide, to include in the competency examination, a discussion of schizophrenia or whether or not Mr. Mowla is suffering from it? How did -- is that standard? Did someone tell you to do it, that's the question?
A Yes, it is standard that we provide a diagnostic

analysis. I also had a differential diagnosis where I considered other diagnoses rather than the one I offered.

Q Have you ever treated anyone with schizophrenia?

A Yes, I have.

Q Have you every examined someone who actually had schizophrenia?

A Yes.

Q About how many times have you treated somebody who had schizophrenia?

A It's difficult for me to say a number, I would say maybe one out of five cases I work on meets criteria of a diagnosis of schizophrenia.

Q One of five while you've been at the MCC?

A In my career, including my other training.

Q Insofar as your other training, what training did you receive in the identification of people suffering from schizophrenia and related schizophrenia-like ailments?

A During my doctoral training at Hofstra we take a diagnostics and psychopathology course in child and adult psycho-pathology. We're trained by supervisors on placements, externship, internship, and post-doctoral fellowship regarding diagnostic criteria.

Q Looking at your resume here, and I going back through the original clinical training, in May of 2010 and June 2008 you participated in child and patient psychological services

clinic; is that right?
A Yes.
Q Folks had schizophrenia at that clinic?
A No.
Q The same year you were a psychological examiner at a training that was conducted at Hofstra, right?
A Yes.
Q Any folks with schizophrenia there?
A It's an out-patient clinic so, no.
Q 2009 you were a psychology rehab counselor extern program, any folks with schizophrenia there?

MR. HEEREN: Your Honor, I'm happy to give defense counsel latitude there, but I think she answered the primary question, which is, has she treated and diagnosed people with schizophrenia before. She answered yes, and provided an estimated number on this.

I don't see the value on voir dire going through each and every single instance of her career on this.

THE COURT: You can ask a few more questions, but go ahead.

BY MR. ZISSOU:
Q How about the extern therapist in anxiety and depression program, folks with schizophrenia there?
A No, mostly treating those with anxiety and depression.
Q The last one is extern therapist in marriage and family

therapy clinic?

THE COURT: I'm going to go out on a limb and say probably not.

A That's correct.

Q And could you tell us if you would, based on your experience and training, are there training that folks in your position generally use to determine whether or not folks suffer from schizophrenia?

A We use the Diagnostic and Statistical Manual, the Fifth Version. We also can administer testing as well.

Q Could you just tell us whether it's, according to the DSM5 or some other understanding that you have, what kind of tests do folks in your position give to determine if somebody has schizophrenia?

A Mostly we're relying on the diagnostic criteria that's within the DSM5. There are clinics that do administer the SCID, which is an evaluation that's used to assess for psychopathology. There are a host of malingering tests that we use when we have a question about the feigning of psycho-psychology.

Q What are the standards in DSM5?

THE COURT: This sounds like cross-examination. If you have an objection to her qualification as a forensic psychologist, you can make them. But you're really cross-examining her on the tests she does on the subject.

MR. ZISSOU: I haven't gotten to that, but I want to know if she knows. I do object to her being qualified.

THE COURT: I think I get the point of it. If something about your cross changes my mind about it, but I'm going to overrule your objection and find that she is an expert in the area of forensic psychology.

MR. HEEREN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HEEREN:

Q I just want to pick up on one last point. You mentioned the use of the DSM manual number five?

A Yes.

Q You described using that to do a diagnoses, is that referred to as differential diagnoses?

A A differential diagnoses is when there is potentially two or more diagnoses that you're deciding between, and there are diagnostic criteria offered in the DSM5 that we go by to determine one diagnosis.

Q So is the use of the diagnostic criteria in DSM5, is that a recognized and appropriate way to make a diagnosis of a patient?

A Yes, it is.

Q What is a competency evaluation?

A A competency to stand trial evaluation evaluates the defendant's factual and rational understanding of the

proceedings against him or her, taking into account their understanding of the courtroom procedures, courtroom personnel and their roles, as well as their ability to understand the charges that are against them.

Q How do you perform this evaluation?

A In performing a competency to stand trial evaluation, I conduct a clinical interview to assess a comprehensive background of the defendant. I also request medical records and reach out to collateral sources, such as family or friends in the community. I conduct a competency-related questionnaire to assess their competency-related abilities. I also conduct a mental status examination, as well as various psychological testing that is appropriate to the referral.

Q Now ordinarily how long in total time does this process last?

A Competency to stand trial evaluations are 30 days long with the ability to request an additional 15 days per statute if needed.

Q During those 30 days, can you say approximately how much time in an ordinary case you would spend directly examining or interviewing the individual involved?

A I typically spend approximately eight hours interviewing defendants for competency to stand trial.

Q Now, a bit more practically or logistically, an individual who has had a competency evaluation ordered who is

in custody, are they placed in a psychological wing, for example, at the MCC?

A No, they are not. We do not have a mental health area with the exception of suicide watch or psychological observation. If the individual is not experiencing any acute psychopathology, such that he or she would need that placement, they are placed in general population.

Q However, during that 30-day period do you have the opportunity to do more informal observation of the individual?

A Yes, I do. By entering onto the housing unit where the individual is housed or by speaking to other staff, such as medical staff or custody staff that interact with the defendant.

Q Do you also, as part of the evaluation -- and I apologize if you said this and I missed it -- do you also review or consider the relationships of the individual with other individuals in their housing unit?

A I do take that into consideration. Although, I value the opinion of staff a bit more than inmate peers.

Q In the past have you in other circumstances have you had an experience where staff or other inmates have provided you with information relevant to a competency evaluation?

A I would say more related to staff opinions; but yes, there are indications in evaluations for better or worse when inmates do confront me regarding the behavior of the

defendant.
Q Do you document that information if you receive it?
A Yes.
Q At the conclusion of a competency evaluation, do you reach a conclusion about competency one way or the other, competent or incompetent?
A I do offer an opinion regarding competency, yes.
Q If you don't, do you request more time?
A Yes, I would request an additional extension. But there is on each case I worked I have offered an opinion.
Q If you think it's appropriate for a particular defendant to receive further examination by another type of doctor or medication, can you do anything about that?
A Yes. I can refer the defendant to the psychiatrist at the prison. I can also recommend at the end of the report that the individual be sent for competency restoration to an in-patient federal medical center such as in Butner, North Carolina.
Q What is -- you said earlier you're familiar with schizophrenia?
A Yes.
Q How would you describe schizophrenia?
A Schizophrenia is a psychotic-based spectrum disorder where there are both negative and positive symptoms.

Positive symptoms can be auditory hallucinations or

delusions. Positive meaning there is an addition of some type of symptom.

Whereas negative symptoms are the substruction of organized thought or social relatedness that the individual has with others, or the ability to care for him or herself in terms of their activities of daily living, such as showering.

Q You previously described what you're looking for in a competency evaluation, the ability for the person to adequately participate in the trial process. So based on that, can someone who is schizophrenic be competent to stand trial in your opinion?

A Yes.

Q Why is that?

A If the individual is successfully treated with an anti-psychotic medication and they are not presenting with any deficits in their factual or rationale understanding, I would offer the opinion that he or she would be competent to stand trial.

Q Now are you familiar with an individual named Rasheedul Mowla?

A Yes, I am.

Q You were asked to evaluate his competency?

A Yes, I was.

Q I'd like to show you a document I believe it should come up on your screen marked as Government's Exhibit one for

identification. It's a multi-page document, I believe approximately 17 pages long. I'm going to point you to the first page, then the last page, and represent to you that this is the complete document. Just for convenience sake, as I think about it, I'm going to give you a paper copy.

May a approach, your Honor?

THE COURT: Yes, go ahead.

Q Have you had a chance to look at this document?

A Yes, I have.

Q What is this?

A This is the competency to stand trial evaluation that I submitted dated February 7, 2018.

Q Do you know for what defendant?

A For Mr. Rasheedul Mowla.

Q How do you know that this is the competency evaluation that you prepared for the defendant in this case?

A By looking at page 17 my signature is there, as well as the chief psychologist, Dr. Alisa Miller. Looking through the various pages of the report I recognize it as my report.

MR. HEEREN: At this time I move to admit Government's Exhibit one into evidence.

MR. ZISSOU: No objection.

THE COURT: Government's Exhibit one is in evidence.

(Government Exhibit 1, was received in evidence.)

BY MR. HEEREN:

Q As part of the competency evaluation of the defendant, did you interview him?
A Yes, I did, on approximately nine occasions for approximately three hours.
THE COURT: No total, or each?
THE WITNESS: I'm sorry. Three hours total during the evaluation period.
THE COURT: Okay.
BY MR. HEEREN:
Q We'll get into this more later, but is there a reason why the evaluation lasted roughly three hours in total?
A I should also mention that I did conduct psychological testing, which are not included in the three hours, so it's a little more. But my interviews were only three hours long due to the defendant's unwillingness to cooperate with the interviews.
Q I see. So when you say three hours, that's actually three hours of time of direct interviews with the defendant?
A Yes.
Q You just mentioned testing, so you performed testing of the defendant as well?
A Yes, I did.
Q They are summarized in your report, can you describe some of the testing that you performed?
A I administered five psychological tests. One the

Minnesota Multiphasic Personality Inventory, second addition revised form abbreviated MMPI-2- RF. It is a personality measure where we look at one's psychological adjustments as well as any response by us.

I also administered the Validity Indicator Profile, abbreviated VIP. It's a measure that looked at both effort and motivation.

In addition to that, I administered the Shipley-2, that's S-H-I-P-L-E-Y, dash, two. And it's a measure of cognitive functioning, assessing both verbal and non-verbal cognitive functioning.

I also administered the Miller Forensic Assessment Screening Tool, abbreviated M-FAST. It's a measure used to assess for any feigning of psychopathology.

THE COURT: Like pretending.

THE WITNESS: F-E-I-G-N-I-N-G.

A Either exaggeration or faking of mental health symptoms.

Lastly, I administered the Test Of Memory Malingering, which is abbreviated TOMM. And it assesses for memory functioning and any feigning of memory deficits.

Q Did you also conduct a background investigation and interviews related to the defendant?

A Yes. I performed a clinical interview assessing Mr. Mowla's developmental history, educational history, marital history, psychiatric history, medical history, and

substance abuse history.
Q Did you interview any other individuals?
A I did interview Mr. Mowla's father on the telephone.
Q Did you speak to counsel involved in this case?
A Yes, I did.
Q Both for the Government and the defendant's attorney?
A Yes.
Q Were you able to talk to any other family members of the defendant?
A No, I was not able to.
Q Why not?
A I did call the second number that I was provided, it was Mr. Mowla's father who answered. I was trying to reach his sister and I was advised by his father that his sister was away at college.
Q Did you review any of the defendant's prior medical records?
A I reviewed prior mental health records. There were prior medical records that are provided in the Borough Electronic Medical Record, abbreviated BEMR.
Q Do you recall where the defendant's mental health records were from?
A Yes. They were from the New York University Hospital, as well as a letter from the Jamaica Hospital mental health out-patient clinic.

Q Were you able to review, at the time of your competency evaluation, were you able to review the medical records from the Jamaica Hospital out-patient clinic?
A No, I was not.
Q Why not?
A I did not receive a copy of those records. The records that I did receive were from attorney Zissou on behalf of the defendant. The defendant declined to sign a consent to release information such that I was not able to request mental health or medical records.
Q To be clear, you did receive a letter from the doctor responsible for the defendant at Jamaica Hospital?
A Yes, I did.
Q Did that letter provide any sort of summary of the treatment he received?
A Yes.
Q Did you consider that in your report as well?
A I did.
Q Did you observe the defendant's interactions or communications with other individuals?
A I did not directly observe him interacting with others. However, I did speak to a custody officer as well as reviewed various medical notes from medical personnel, including the psychiatrist who did evaluate Mr. Mowla.
Q Did you observe or review any written communications by

the defendant with any other people or any other telephone calls with the defendant with any other people?

A I believe I attempted to review the telephone calls. I do not believe they were in English. But the writings -- no, I did not have any writings that were provided by the defendant.

Q What about e-mail communications?

A Yes -- I apologize, yes. I did review e-mail correspondence that the individual had with his attorney.

Q Did you ever observe the defendant interacting with his father or any other family members either on the phone or otherwise?

A I do not believe so.

Q You were able to complete all of the testing that you wanted to complete on the defendant?

A I administered all the testing I wanted to complete. However, I was not able to finish the administration of one of the measures. And there was a second measure that Mr. Mowla did not endorse enough items, such that it was deemed unscoreable.

Q Can you clarify which one you did not complete, which was unscoreable?

A The measure that was unscoreable was the MMPI-2-RF, which assesses for personality, as well as response bias. I was unable to complete the administration of the TOMM due to

Mr. Mowla eliciting reasons why he was unable to proceed.

Q Is that the instance that you described in your report where he leaves and ultimately does not return to your office?

A Yes.

Q Did you reach a competency determination about the defendant?

A Yes, I did offer an opinion.

Q What was your opinion?

A My opinion is that Mr. Mowla does exhibit the necessary competency related abilities.

Q Did you also offer a -- which you identified as a rule-out diagnosis?

A Yes.

Q What is a rule-out diagnosis?

A A rule-out diagnosis is when there is uncertainty regarding the diagnosis or there is inconsistency in the data that's provided, such that the diagnosis is offered with caution or for future consideration in the event that one was provided with more consistent data.

Q In this case, can you summarize what was the inconsistency or ambiguous data that you received such that you felt it necessary to offer a rule-out diagnosis?

A In an abundance of caution I offered the malingering diagnosis as a rule-out due to the history that was presented in the mental health records that I was provided from NYU. In

those records it did indicate that Mr. Mowla was previously treated with an anti-psychotic medication; that being Risperdal, first at 1 milligram and then titrated or increased up to 3 milligrams where he did appear to respond well to treatment with that medication. With that information I did want to consider a potential diagnosis of a psychotic spectrum based disorder. However, Mr. Mowla did not present with any acute psychopathology during our meetings despite his self-report of these symptoms.

Q I think it's largely evident from your answer, but can you briefly clarify what the term, the diagnosis, malingering means?

A Malingering diagnosis is a feigning or grossly exaggerated presentation of psychopathology symptoms in an effort for secondary gain, such as evading criminal prosecution.

Q What did you conclude as to his need for medication, or was what was your opinion?

A As a psychologist, again I do not prescribe medication; however, I am able to refer defendants with whom I work with to the psychiatrist. My opinion was that Mr. Mowla did not present with any acute psychopathology that would warrant treatment with psychotropic medication. However, I did make multiple referrals to the staff psychiatrist at MCC New York.

Q What was the result of those referrals?

A The staff psychiatrist had met with Mr. Mowla first at MDC, the Metropolitan Detention Center in Brooklyn, New York. At that time there was a rule-out of malingering diagnosis offered by the psychiatrist. No medication was prescribed.

When he was sent to us, at MCC New York, he was again seen by the psychiatrist at my referral, as well as the referral of the clinical director in medical services. The staff psychiatrist, who is the same psychiatrist who saw Mr. Mowla at MDC Brooklyn, again opined that the individual was not presenting with any acute psychopathology, offered a diagnosis of malingering, and did not prescribe any medication.

In addition to that, Mr. Mowla did express to me on multiple occasions that he wanted psychotropic medication. He also communicated that to his defense counsel by e-mail.

I do take the needs of the patients I treat very seriously, so I again referred him to Dr. Okafor, the staff psychiatrist, who did meet with the patient a second time at MCC New York, and again said the patient did not require any treatment with psychotropic medication.

Q Now, your evaluation of the defendant, your opinions, are based on the information you received at that time; is that right?

A Yes, and I also consider any historical documents.

Q What I mean to say, the diagnosis that you provided,

that's your diagnosis of him at the time of your evaluation; in other words, in February of this year?

A Yes, that's correct.

Q But of course, as you just indicated, you considered historical diagnoses?

A Yes.

Q In addition to the items you already identified, can you provide us the other reasons why you concluded, why you offered, an opinion of malingering?

A Regarding the rule-out diagnosis of malingering that I offered, I took several data points into consideration. One being the very vague account that Mr. Mowla gave of his experience of auditor and visual hallucinations. He often times declined to talk about the specifics of the hallucinations that he was reportedly experiencing.

I also administered several malingering-based tests. One being the M-FAST, which I mentioned previously, which is assessed for any feigned psychopathology. On that measure Mr. Mowla did have an elevated score.

His observed behaviors in comparison to the reported behaviors were inconsistent, meaning that he would report experiencing something but it was not observed in his behavior during my administration of the test.

In addition to that, he endorsed several symptoms that were of a severity and pervasiveness that is not typical.

He also presented a symptom combination which is rarely, if ever, seen together in bona fide psychiatric spectrum based disorders.

THE COURT: What was that? What was the combination?

THE WITNESS: It would be an example such as only on every third Tuesday -- I'm not using an exact example for copyright issues -- I experienced auditory hallucinations. And I only experienced that when I'm hungry.

So it's very bizarre, unusual symptom combination that you would not typically see in somebody with true schizophrenia or psychotic disorder.

Q So I'd like to have you elaborate on that for a moment. You referred to positive and negative signs of schizophrenia earlier, do you recall that?

A Yes.

Q Can you provide us some examples of what you've experienced as clinical examples or true examples of positive signs of a person with schizophrenia?

A So positive symptoms that I've observed in somebody suffering from schizophrenia is talking to unseen others, where they appear to be in conversation with people who are not in the room, they are responding to auditory hallucinations or voices that others do not hear. They may also appear to be seeing things, which are referred to as

visual hallucinations, significantly less common than auditory hallucinations.

Q How would you characterize how symptoms impact a person's day to day activity or interactions with others?

A Positive symptoms of schizophrenia significantly impact one's functioning. It's very difficult for them to concentrate and to pay attention to the task at hand. They are distractible. They are often irritable. It's difficult to engage them in any social-appropriate conversation.

Q Did you observe those issues with the defendant in your experience?

A No, I did not.

Q Can you elaborate on negative symptoms?

A Negative symptoms are the substraction of behaviors where you may see a substraction in their emotion at or their ability for social reciprocity or engage appropriately in interpersonal functions.

In addition to substraction of activities of daily lives where the individual is not bathing, or they are not attending to their hygiene or eating appropriately.

Q I take it that in your experience schizophrenia similarly have a significant impact on the individual's day to day activities?

A Yes, it does. Often times in those cases we do have to house such individuals on psychological observation or suicide

watch due to the risk in general population.
Q Did you observe those negative symptoms in the defendant?
A The only item that I observed in Mr. Mowla was a flat-ended affect, which seemed to be consistent with prior records, decreased eye contact, but I attributed that to his lack of interest in cooperating with the forensic evaluation.
Q You mentioned that he had an elevated score, the defendant had an elevated score, on the test you had him take for malingering?
A Yes, on both the M-FAST as well as the TOMM.
Q When you say elevated score, do you mean that it is indicative of malingering?
A It is a data point that needs to be considered for sure. I take that into consideration as well as other information that I'm provided, but certainly with an elevated score on the M-FAST you're considered that there is malingering there that is happening.
Q I want to make sure elevated means more likely as opposed to less likely?
A Yes.
Q Did you observe anything else about the defendant's interactions that indicated, that supported, your diagnosis of malingering in terms of his interactions with others?
A According to a note written by the staff psychiatrist, he did speak with the defendant's cell mate who indicated that

Mr. Mowla was not presenting with any symptoms of psychopathology. As I mentioned before, we certainly take into consideration that this is a self-report by an inmate and not a staff member.

Q Did any staff member provide you with any reporting that was relevant to your evaluation?

A On my last interview with Mr. Mowla, the custody officer assigned to the housing unit did come into the office where I was and told me that he would not be returning to complete the testing administration. So that was my only other verbal interaction with staff regarding the defendant.

Q So nobody, no staff at MCC came to you and described any potential problems with the defendant?

A No.

Q What about -- did you interact -- you had an interview with the defendant's father; is that right?

A Yes.

Q What did the defendant's father tell you?

A Mr. Mowla's father indicated he had recently spoken to his son on the telephone. He indicated that he appeared to be doing well. That he had not been taking medication. And that he was, in his opinion, functioning okay without the medication.

Q So now I want to get finally to the details of the competency evaluation. Can you explain to us the reasons why

you concluded the defendant was competent to stand trial?

A Mr. Mowla did not exhibit to me any symptoms of acute psychopathology. I considered both his factual and rational understanding of the proceedings against him, as I would for any defendant, referred for a competency to stand trial evaluation.

Regarding his factual understanding, Mr. Mowla's information that he provided appeared to be intact. He was aware of the nature of his charge. He also was aware of various definitions regarding courtroom proceedings. And he was aware of the nature of his being sent to MCC New York.

Unfortunately, I was unable to complete the competency to stand trial evaluation on two different interview dates. The first being because Mr. Mowla said he was experiencing auditory hallucinations and that the questions were upsetting him such that he wanted to return to his housing unit, which he was allowed. The second time I tried to continue with the competency related questions, that was after the administration of the test we spoke about earlier, the TOMM, where Mr. Mowla did not return to the office.

Regarding his rational understanding, I did not have any concerns regarding his ability to coherently and logically assist with counsel, as evidenced by his appropriate communication with counsel over e-mail. And in addition to

that, there were no observed or reported psychopathology based symptoms by myself or other staff at MCC New York during the evaluation period.

THE COURT: How far did you get with him in terms of the competency exam? What were you able to complete?

THE WITNESS: It was more definition based where I was asking him basically what his charges is, what an oath is, why he was sent to MCC New York. I did not get as far as his relationship with his attorney, as well as the plea bargaining process. However, I did ask him about the various pleas and he did express understanding of those, guilty and not guilty.

THE COURT: Did you ask him about the various roles of different people in the courtroom in terms of the prosecutor, judge?

THE WITNESS: No, I did not get that far.

THE COURT: Was that because the two separate interviews were cut short?

THE WITNESS: Yes.

THE COURT: And the last one, you said he didn't -- maybe I missed it -- that the custody officer said he wasn't coming back. Did he give a reason? Did you ever find out why?

THE WITNESS: During my administration of the TOMM, Mr. Mowla reported that -- there were various reports -- that he was thirsty, that he wanted water, that he wanted to use

the bathroom, that he had a headache, that he was hearing voices, although I never observed him to be hearing voices, that he felt as if I was forcing him to stay there. I made it through the first trial of that test, there were two more trials after that that I would have liked to administer. However, given Mr. Mowla's report I did release him from the office temporarily with the hope that he would return; not that I would be able to continue with that test, it would have been spoiled at that point, but the hope that I could continue with the competency-related questions.

THE COURT: And just, the message was he's just not coming back.

THE WITNESS: Right.

THE COURT: Go ahead.

BY MR. HEEREN:

Q Were there any instances where the defendant didn't understand a particular legal term or legal concept that you asked him about, and how did -- and what did do you when that happened, and how did he react?

A I believe there was one example. I would have to refer to my report just so I do not misquote on that.

Q Sure, please do. Let the record reflect the witness is looking at Government's Exhibit 1.

A Referring to page 16 on the top of my report, when I asked him the definition of a plea and the pleas available to

defendants in court, Mr. Mowla responded, quote: I never heard of the word plea. I never heard of Indictment or complaint. But now know a complaint is something they can hold you with.

So he did respond appropriately when I would talk to him about various definitions, although I did not get very far when asking him those questions.

Q After the defendant told you he didn't understand or had never heard the word plea, did you provide him with a definition as you understood it?

A I believe that was him spontaneously reporting what he remembered to be the word plea.

Q So when, I'm looking at the first full paragraph on page 16, Mr. Mowla further: I just know that if you break the law and you go to court and they choose guilty or not guilty. That in your opinion indicated that he eventually on prompting was able to define the term?

A Yes.

Q As a more general matter, when the defendant didn't understand something, was he able to express, did he express to you when he didn't understand something?

A Yes, he did.

Q When you attempted to correct his understanding or help him with his understanding, did he appear to be able to then observe that new information and understand the concept?

A Yes. For example, I referred to the affidavit in support of arrest when he indicated that he was unsure about something related to the charge. I did read it to him. And then I subsequently asked him his opinion as to whether the charge against him is a serious one. And with the information I provided him, he was able to offer an opinion. He did seem to express an understanding.

MR. HEEREN: One moment, your Honor. At this time the Government has no further questions for the witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. ZISSOU:

Q Dr. DiMisa, let me see if I get straight to the point, is it your testimony that you did not have enough time to conduct a complete and thorough evaluation?

A No.

Q Do you think your conclusions would change if you had another ten or 20 hours to observe Mr. Mowla?

A In the event that the defendant presented with any psych pathology during that time, perhaps. But the amount of time that I had with him, I am confident with the opinion I offered.

Q So the fact that he didn't come back for any interviews, or he left without completing a test, or that you only had three hours, that in no way undermines anything that you've

said here today; is that right?
A No, it does not.
Q And it's not like you're hedging your opinion that he is competent, you're absolutely confident in it, right?
A Yes, I am.
Q And insofar as the diagnosis that he was malingering, are you equally confident in that?
A Yes, I am, as a rule-out diagnosis.
Q When you say rule-out diagnosis, tell us again what you mean by that?
A Where there is a potential lack of diagnostic certainty or inconsistency in data, such as what I mentioned before regarding the mental health records that I was provided from NYU hospital indicative of a history of a diagnosis of schizophrenia, as well as treatment with psychotropic medication.
Q So folks who have schizophrenia often do not present with having schizophrenia, am I right about that?
A I don't understand your question.
Q In other words, just because somebody has -- is it currently -- isn't currently exhibiting the symptoms of schizophrenia doesn't mean they don't have a mental disease or disorder; is that right?
A I would say with a diagnosis such as schizophrenia, it typically has to be treated with an anti-psychotic. It's not

typical for symptoms to remit on their own.

Q The fact that Mr. Mowla had a long history at multiple different hospitals over a period of time where the consistent diagnosis was apparently schizophrenia, how do you factor that into your assessment, may I ask?

A I did consider it as a differential diagnosis. I was particularly cautious in the NYU records. It does indicate Mr. Mowla was treated with Risperdal 1 milligram titrated with three with good effect. However, there was some mention of his consistent use of marijuana. I should mention that when they did the urine toxicology at NYU, it came back negative indicating that there was no substances within his system.

Also upon admission, I should mention, he was first admitted to New York Presbyterian Hospital on February 14, 2016. Upon admission he did not present with any observable auditory hallucinations or visual hallucinations, but as per family he had been more isolative. He appeared to potentially be experiencing a prodromal phase, which is the initial phase of schizophrenia.

He had a decrease in his GPA from 3.6 to 2.2. He was on academic probation. And he did report experiencing stress related to his career path and where to do go with his schooling.

So I do take into consideration that there is a history of a diagnosis, as well as a history with the

psychotropic medication. I did take into consideration the fact that he had throughout high school been using marijuana and then increased his usage to daily during his first year in college.

Of note, as per his self-report, the last use of marijuana was in January, I believe the first of the year, 2016. As I mentioned he was admitted on February 14, 2016, to New York Presbyterian Hospital then transferred to New York University Hospital on February 17 and discharged on February 25.

THE COURT: What is the significance of the marijuana usage? Is it related to schizophrenia?

THE WITNESS: With marijuana usage you can see an emergence of psychotic symptoms. I was careful to take into consideration whether that had any impact on Mr. Mowla. They did indicate in the NYU records they too were considering whether there was a substance induced or withdrawal-based psychosis. They ultimately opined that it was not; and that he was suffering from schizophrenia.

I do have respect for NYU Hospital, and I completed a rotation. It could have been possible he was presenting with those symptoms at that time in 2016, but they were not observable to me during my evaluation.

Q In other words, they weren't simply -- because they were not observable to you, doesn't mean that the previous

diagnosis were incorrect, is that your testimony?
A Certainly.
Q As far as marijuana is concerned, you're aware that marijuana use or heavy marijuana use in teens, late teens, can bring on psychotic symptoms, you're aware of the studies?
A Yes.
Q That is something you learned by reviewing the medical records that were submitted to you, am I right?
A I learned -- can you complete that?
Q That's something that you found out about when you were provided with the medical records from NYU?
A I found out that they were offering an opinion, it was not related to drug use and his urine toxicology was negative.
Q But you did not rely on --

THE COURT: We need to take a quick break.

(Continued on the next page.)

(Sidebar conference.)

THE COURT: Here's my question, why don't they just finish the competency, isn't that the best way? We really should do that, otherwise -- maybe he's a faker, I don't know. But it seems to me, you should at least finish the exam. If he refuses to, we can keep going on with this, but it doesn't make sense to me. That's it. Not just because of my weakened condition, but I really do think that you should at least try.

MR. HEEREN: When you say the competency exam?

THE COURT: She said she didn't finish it.

MR. HEEREN: The interview portion of the competency questions?

THE COURT: Dot our i's and cross our t's. I mean, the e-mails, things like that, give you a sense that maybe he's better off than some defendants that we have. But there is a big gap in the record where she says she couldn't finish the competency exam, then if I find him competent, Second Circuit might not agree with that.

MR. HEEREN: Okay.

THE COURT: Sometimes they take exception to things. My suggestion is that we put this off, finish if we can. Do you want me to instruct him that he should cooperate with them? Because do you whatever you want, I don't like to interfere with these, with the relationship you have with him. But obviously if he refuses to cooperate again that's

something that might be to his benefit. It's in his interest to cooperate.

Do you have a problem with me saying it?

MR. ZISSOU: I don't actually. Here is my concern, I think your point is well taken, I suspect the parties will embrace it. My concern is Dr. DiMisa has already said nothing is going to change her opinion, so.

MR. HEEREN: Well, that's not what she said.

MR. ZISSOU: What did she say?

MR. HEEREN: She said other facts, if there were other facts and things that were diagnoseable that changed her opinion, she would change her opinion.

MR. ZISSOU: If the Court is not concerned about any of Dr. DiMisa's answers insofar of her willingness to perform a continuing examination professionally, I certainly have no objection. My only concern is it sounded like despite the fact that she was saying she didn't have enough time, nothing would change her opinion.

MS. LEE: She wasn't saying that she didn't have enough time. I don't think she would have issued her opinion, she made it clear, if she didn't feel she had enough facts in the tests she did complete and the interviews that she did complete.

We fully understand the Court wanting to see if we can make one more effort to get him to complete. Her point of

that is it is not a single factor, she had enough factors, all the things she testified to.

MR. ZISSOU: I'm not going to argue the merits.

THE COURT: I've done enough of these things to know how they work, but I do think that it's a serious enough question that maybe there was something troubling him that day. I read the report and looked at the record, I don't think it's an unreasonable conclusion to make. But I do think because the issue is so important that we ought to give it another try and maybe you want to use the same person, maybe you don't, that's not for me to say. But I do think that in the interest of fairness, really make sure we've got as full a record as possible, I'd be more comfortable making a decision with all the information that I can get.

MR. ZISSOU: I have no objection to that.

THE COURT: I think that's what we'll do. How long do you think that will take?

MR. HEEREN: I suspect that it may require us to request another order from you.

THE COURT: I'll sign it.

MR. HEEREN: So I think it would be the same 30 days, with the caveat that this time it's on the BOP to make the call. If they conclude for whatever reason it's better to do a second one at another facility, that may impact things.

MR. ZISSOU: Look my better judgment was to let this

proceed, but this time I think I have to be present when she conducts his interviews, it might be helpful. There was one time which she e-mailed me to ask me for help in getting him to attend. I spoke to him. I said, look, it's not Goldsmith, she's the one that has to do this. Then he started to attend. I don't recall hearing post that there was any of the lack of cooperation. This time I think it's better if I'm there.

THE COURT: Sounds good.

MR. ZISSOU: I think the statute doesn't prohibit me.

THE COURT: I know for state-wise we can go. I can't direct competency. Competency in state is usually down at Kirby. I don't recall, defense counsel.

MR. ZISSOU: My wife was there for a week with her client.

THE COURT: In terms of the mental disease or defect, I think it's routine for defense counsel to be there. It makes sense if you want to be there for the competency thing too. I think that makes sense. I'll just tell him what we're going to do and we'll adjourn it for 30 days. You'll let me know if you need more time, we'll adjourn it for 45.

MS. LEE: I think it's 30, assuming he goes back to the facility he has to be retransferred, it's 30 days to conduct it if they start again and then another time.

THE COURT: You want to do 60? Is that okay with

you?

MR. ZISSOU: Yes.

THE COURT: Then they can accommodate your schedule as well.

(End of sidebar conference.)

(Continued on the next page.)

(In open court.)

THE COURT: Having had a chance to think about some of these things, it seems to me that under the circumstances, we talked about this at the side with counsel, that really the appropriate thing to do, to make sure the record is complete, is to make an attempt to finish the entire competency examination so that I have a complete record on which to make that decision.

I have read the report by the doctor, Mr. Mowla. It is in your interest to participate in this examination. When the doctor wants to interview you, you need to go and interview with her. It doesn't help you if you refuse to participate in it. It doesn't. It's not a helpful factor if the person who is being examined won't permit the doctor to examine. It's something that you should participate in. You can certainly talk to your lawyer about that.

I do think that under the circumstances, just so our record is complete, so I have all the information that I need to make a decision that's fair to both sides, I would like to see that process completed. So I'm going to adjourn the case for 60 days. I know that the Bureau of Prisons needs at least 30 to do one of these examinations, and then I know that defense counsel is going to arrange to try to be present for at least a portion of it; is that right?

MR. ZISSOU: Yes, your Honor.

THE COURT: And so we discussed at the side 60 days is probably a time that will work.

We're on trial in June, but we could see everybody at 4:30 on June 26 -- let me think about this. I have a trial on, I'm 99 percent sure it's not going to go, let's say 2:00 o'clock on that day, June 26. Does that work for everybody?

MR. ZISSOU: It does.

MR. HEEREN: Yes, your Honor. Obviously to the extent there is any -- we'll check with the witness or if there is a new doctor.

THE COURT: You'll let me know.

I do want to thank the Doctor for her time. Thank you so much.

MR. HEEREN: Your Honor, the one other thing I wanted to clarify for the record when you said, and we discussed this at sidebar, when you say that the competency examination wasn't completed, the testimony today I believe was that her competency evaluation, her opinion, was completed. Part of that was that certain aspects of the examination were not finished because the defendant did not arrive.

THE COURT: That's what I'm talking about. I'm just talking about there were certain things that she was unable to complete because the defendant refused to participate. So I

think we should remedy that.

I'm not saying one thing or the other. I'm not saying anything about her ultimate conclusion at all.

Anything else?

MR. ZISSOU: No, your Honor.

MR. HEEREN: Thank you, your Honor.

THE COURT: I want to thank the Marshals also.

(Whereupon, the matter was concluded.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Rivka Teich, CSR RPR RMR FCRR
Official Court Reporter
Eastern District of New York

SAMANTHA DIMISA

I N D E X

EXHIBITS